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ABSTRACT

The document presents New York state regulations regarding services to handicapped children. Sections address the following areas: definitions; state aid to school districts for the education of students with handicaps; establishment of a committee on the handicapped; educational programs (special classes, resource programs, home and hospital instruction, individualized education programs); procedural due process; state aid to blind, deaf, and severely physically handicapped in certain state operated and state supported schools provided by Articles 85, 87, and 88 of the Education Law and Chapter 1060 of the Laws of 1974; state assistance for instruction to severely handicapped children in out of state facilities under the provisions of Section 4407 of the Education Law; approval of nonpublic schools located within the state under the provisions of Section 4402 of the Education Law; state aid for maintenance; state assistance for the instruction of handicapped students pursuant to Section 4406 of the Education Law; census of handicapped children; allowable tuition and maintenance rates; state assistance for the transportation of handicapped students pursuant to Section 4405 of the Education Law; confidentiality of personally identifiable data; annual financial statements; and admission to public schools of children residing in facilities of the Office of Mental Hygiene and the Office of Mental Retardation and Developmental Disabilities. (SBH)

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UNIVERSITY OF THE STATE OF NEW YORK
THE STATE EDUCATION DEPARTMENT
OFFICE FOR EDUCATION OF CHILDREN WITH HANDICAPPING CONDITIONS
ALBANY, NEW YORK 12234

REGULATIONS OF THE COMMISSIONER OF EDUCATION SUBCHAPTER P

Pursuant to Sections 207 and 4403 of the Education Law

PART 200 — HANDICAPPED CHILDREN

Section 200.1 Definitions

(a) *Alternate learning center* means a public education program which operates separately from the regular public school facility in order to offer a comprehensive educational program for an identified population of severely handicapped children.

(b) *Appropriate specialist* means one who is qualified to offer expert advice and assistance relative to the particular handicapping condition of the child under review.

(c) *Days* means school work days, except that during the months of July and August days shall mean every day except Saturday, Sunday and legal holidays.

(d) A *handicapped child* means a person under the age of 21 who is entitled to attend public schools pursuant to section 3202 of the Education Law and who, because of mental, physical, emotional or autistic reasons, or because of a specific learning disability can receive appropriate educational opportunities from special services and programs to include, but not limited to, transportation, special classes, part-time programs, resource programs, alternate learning centers, home instruction and special teachers; State-operated or State-supported special schools or other special facilities; pupil personnel services; and/or those services, facilities or programs which can be obtained through contracts with boards of cooperative educational services, public school districts, approved nonpublic schools, or other agencies approved by the department.

(1) A *mental reason* means a condition which impairs or limits the child's intellectual functioning.

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(2) A *physical reason* means orthopedic, visual, auditory, neurological and other medical or organic conditions which result in inability to benefit from the regular educational programs for nonhandicapped children without some form of special services or programs.

(3) An *emotional reason* means a condition of psychosocial origin leading to behavior which interferes with the child's ability to adjust to and benefit from existing regular class programs.

(4) *Specific learning disability* means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, or to do mathematical calculations. The term includes such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage. A child who exhibits a discrepancy of 50 percent or more between expected achievement based on his intellectual ability and actual achievement, determined on an individual basis, shall be deemed to have a specific learning disability.

(5) *Autism* is a behaviorally defined syndrome which occurs in children of all levels of intelligence. The essential features are typically manifested prior to 30 months of age and include severe disturbances of developmental rates and/or sequences, of responses to sensory stimuli, of speech, of language, of cognitive capacities, and of the ability to relate to people, events, and objects.

(e) *Home instruction* means instruction provided on an individual basis for a handicapped child confined to the home, hospital, or other institution because of the handicapping condition.

(f) *Impartial hearing officer* means an individual assigned by a board of education to hear an appeal and render a decision. An impartial hearing officer shall be independent, not an officer, employee, or agent of the school district or of the BOCES of which such school district is a component, and shall not have participated in any manner in the formulation of the recommendation sought to be reviewed. A hearing officer shall not be considered to be an officer, employee or agent of a school district solely because the hearing of-

ficer is compensated for his services as a hearing officer by the district.

(g) *An individual psychological examination* means a comprehensive process by which a school psychologist or licensed psychologist uses a variety of psychological and educational techniques in the child's dominant language, to study and describe a pupil's developmental, learning, behavioral, and other personality characteristics for the purpose of educational planning.

(h) *Notice* means written statements in English and in the dominant language of the parent's home, and where feasible, through oral communication in the dominant language of the home. In the event that the parent is deaf, notice shall mean communication by all means which are feasible and appropriate.

(i) *Parent* means a natural mother or father, foster parent, or person in parental relation, or a legally appointed guardian or a surrogate parent for a child appointed in accordance with the procedures set forth in section 200.7 of this Part.

(j) *Part-time program* means any special education program in which a child is enrolled for less than full time.

(k) *Resource program* means a program provided in an area of adequate size to accommodate a certified special education teacher, a small group of students as well as the specialized equipment necessary for instruction of handicapped children registered in special or regular classes, used for varying periods during the day for children who are in need of specialized supplementary instruction. Teachers who provide itinerant services are defined as a type of resource program teacher.

(l) *School psychologist* means one who is certified as such.

(m) *Special class* means a class consisting of handicapped children who have been grouped together because of similar educational needs for the purpose of being provided a program of special education under the direction of a certified special education teacher.

(n) *Special education teacher* means one who is certified to provide instruction or supplementary instructional services to handicapped children.

(o) *Surrogate parent* means a person appointed to act in place of parents or guardians when a child's parents or guardians are not known, are unavailable, or the child is a ward of the State.

(p) *Program or educational placement* means a special education program based on evaluation of a child's abilities and needs and handicapping condition.

(q) *Change in program/educational placement* means a change in the disability/handicapping classification of a pupil, transfer to a dif-

ferent type of program, or the transfer to or from a school district, BOCES, school enumerated in article 85, 87 or 88 of the Education Law, or an approved private school.

(r) A *paraprofessional*, in terms of educational services to children with handicapping conditions, means an individual under the supervision of an appropriately certified special education teacher who assists in the instructional program for handicapped children.

(s) *Related services* means transportation and such developmental, corrective and other supportive services as are required to assist a handicapped child to benefit from special education, and includes speech pathology and audiology, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities in children, counseling services, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, parent counseling and training.

(t) *Special education* means specifically designated instruction, at no cost to the parent, to meet the unique needs of a handicapped child, including special class instruction, resource program instruction, instruction in physical education and home instruction.

(u) *Individualized education program* means a written statement of special education and related services for a handicapped child.

(v) *Debt service* means interest expense on the principal, borrowed for capital indebtedness.

(w) *Fiscal year* means a 12-month period beginning July 1st and ending the following June 30th.

200.2 State aid to school districts for the education of pupils with handicaps.

(a) For the purpose of apportionment of aid pursuant to subdivision 19 of section 3602 of the Education Law, the definition of *eligible handicapped pupil*, and the definition of *handicapped child* for the purpose of the apportionment of aid pursuant to subdivision 3 of section 4405 of the Education Law, shall be a pupil who possesses a handicapping condition, except educable mental retardation or specific learning disability, as determined by the school district committee on the handicapped, and which requires that the pupil be educated in a special class or classes, school for the handicapped, or board of cooperative educational services, more than 80 percent of the school day, or who possesses a severe disability which requires home or hospital instruction in excess of 60 calendar days. As used in this subdivision, *special classes* and *home and hospital instruction* shall mean classes or instruction meeting the requirements of subdivisions (a), (b) and (e) of section 200.4 of this Part.

(b) For the purposes of apportionment of weighted aid pursuant to section 3602 of the Education Law, the definitions of pupils with handicapping conditions shall be:

(1) *Trainable mentally retarded*—a child who, on the basis of a comprehensive evaluation, such evaluation to include an individual psychological examination, is determined to possess general intellectual capacity that falls lower than three standard deviations below the mean of the general population, cannot profit from programs established for the educable mentally retarded, but may be expected to profit from a special education program for the trainable.

(2) *Educable mentally retarded*—a child who, on the basis of a comprehensive evaluation, such evaluation to include an individual psychological examination, is determined to possess general intellectual capacity that falls lower than 1.5 standard deviations below the mean of the general population, cannot profit from regular classroom instruction, but may be expected to profit from a special education program.

(3) *Severely speech/language impaired*—a child with unintelligible speech or inability to communicate verbally. Severely speech/language impaired does not include other speech/language impaired children who exhibit a reduced ability to acquire, use or comprehend language, mild stuttering, vocal disorders or articulation deviations.

(4) *Hearing impaired*—a child with hearing handicap in the 40 and above decibel range (ISO) whose hearing loss precludes his functioning normally in a regular classroom situation without the supportive services of a resource program.

(5) (i) *Visually impaired*—a legally blind child with the visual capacity of 20/200 or less in the better eye with the best correction, or a field of vision restricted to a 20-degree arc.

(ii) *Partially sighted*—a child whose visual acuity in the better eye with best correction ranges between 20/70 and 20/200, including those children who can still function capably with their residual vision and who have a medically indicated progressive visual loss, or a recurring serious medical eye problem affecting acuity and operable eye diseases.

(6) *Emotionally disturbed*—a child whose condition has been determined to be such by a school psychologist, a psychiatrist, or by an approved mental health clinic.

(7) *Physically handicapped*—a child who manifests orthopedic, neurological and other medical conditions which result in inability to benefit from the regular educational programs for

nonhandicapped children, without some form of special assistance.

(8) *Autistic*—a child who manifests a behaviorally defined syndrome which occurs in children of all levels of intelligence. The essential features are typically manifested prior to 30 months of age and include severe disturbances of developmental rates and/or sequences, of responses to sensory stimuli, of speech, of language, of cognitive capacities, and of the ability to relate to people, events, and objects.

(c) Each school district which receives an apportionment for eligible handicapped pupils pursuant to subdivision 19 of the Education Law section 3602 and/or for pupils with handicapping conditions shall use such apportionment for educationally advantageous programs. An *educationally advantageous program* shall mean an instructional program having the following characteristics:

(1) activities and services which are in accordance with the provisions of subdivisions (a) and (b) of this section and section 200.4 of this Part, and which are clearly designed to achieve educational objectives which are consistent with the handicapping conditions of the pupils served;

(2) expenditures which are directly related to such activities and services.

(d) Each school district which receives aid under subdivision 19 of section 3602 of the Education Law for eligible handicapped pupils and/or an additional apportionment of weighted aid for pupils with handicapping conditions shall prepare acceptable plans describing the use of such aid or apportionment, prior to September 1, 1974, and on September 1 every third year thereafter. Each district plan shall be in a form prescribed by the Commissioner, and shall include but need not be limited to the following:

(1) identification of the number and grade span of pupils to be served by type of handicapping conditions;

(2) the method to be used to evaluate the extent to which the objectives of the program have been achieved;

(3) the estimated budget to support such plan;

(4) the date on which such plan was adopted by the board of education.

(e) Each school district which receives aid under subdivision 19 of section 3602 of the Education Law for eligible handicapped pupils and/or additional apportionment of weighted aid for pupils with handicapping conditions shall prepare and submit, on or before Oc-

tober 1 immediately following the close of the school year on June 30, complete annual reports in a form prescribed by the Commissioner, which shall include but not be limited to the following:

(1) a description of the expenditure for programs for eligible pupils;
(2) the number of pupils served in the programs and how they were identified as pupils having such needs;
(3) an evaluation of the results obtained from the operation of such programs.

(f) For the purposes of apportionment of formula aid under the provisions of Chapter 53 of the Laws of 1978, the following definitions shall apply:

(1) *Learning disabled* means the handicapping condition of a specific learning disability as such term is defined in paragraph (4) of subdivision (d) of section 200.1 of this Part.
(2) *Mean salary* is the average classroom teacher salary in each school district as reported by each school district in the Basic Educational Data System, increased by 30 per centum, except that for New York City such average classroom teacher salary shall be increased by 39 2/10 per centum.
(3) *Average daily attendance* means the sum of learning disabled pupils of each school district reported in October and February of the 1978–79 school year on the resident handicapped children report divided by two, and the quotient multiplied by the school district's attendance ratio as reported on the Attendance Report and Worksheets for 1978–79 State aid.

200.3 Committee on the handicapped

(a) Each board of education or board of trustees shall appoint a committee on the handicapped in accordance with the provisions of Education Law section 4402.

(b) Except in cities having a population in excess of 125,000 inhabitants, the board of education of any city school district, or any school district having in excess of 200 handicapped pupils may appoint subcommittees to assist the committee on the handicapped of such districts in accordance with the provisions of this subdivision.

(1) The board of education shall determine the number of subcommittees to be appointed, upon the recommendation of the committee on the handicapped.
(2) The membership of each subcommittee shall be similar in composition to that of the committee on the handicapped.

(3) Except as provided in paragraphs (4) and (5) of this subdivision, each subcommittee may perform the functions for which the committee on the handicapped is responsible pursuant to the provisions of Education Law section 4402.

(4) In the event that the recommendation of a subcommittee concerning a modification or change in the identification, evaluation, educational placement or provision of a free appropriate public education to a pupil is not acceptable to the parent or legal guardian of such pupil, the subcommittee shall refer the matter to the committee on the handicapped.

(5) Each subcommittee shall report annually the status of each handicapped child within its jurisdiction to the committee on the handicapped.

(c) The board of education of any city school district having a population in excess of 125,000 inhabitants may appoint subcommittees to assist the committee on the handicapped of such districts in accordance with the provisions of this subdivision.

(1) The board of education shall determine the number of subcommittees to be appointed, upon the recommendation of the committee on the handicapped.

(2) The membership of each subcommittee shall be similar in composition to that of the committee on the handicapped.

(3) Except as provided in paragraph (4) of this subdivision, each subcommittee may perform the functions for which the committee on the handicapped is responsible pursuant to the provisions of Education Law section 4402.

(4) Each subcommittee shall report annually the status of each handicapped child within its jurisdiction to the committee on the handicapped.

(d) Each school district shall provide for each handicapped child a physical examination in accordance with the provisions of section 904 of the Education Law, an individual psychological examination, a social history, and other suitable examinations and evaluation as may be necessary to ascertain the physical, mental and emotional factors which contribute to the handicapping conditions. The reports of all such examinations shall be provided to the committee on the handicapped.

200.4 Educational Programs

(a) *Special classes (general)*

(1) The formation of special classes, including grouping and numbers, shall depend upon the severity of the children's

handicaps, capabilities and educational, social or emotional needs as defined in section 200.2 of this Part.

(2) Unless the student's handicapping condition requires special classes, the student shall be educated in regular classes with appropriate supportive supplementary assistance.

(3) Where special class placement is required, the handicapped student shall participate in the programs of, and utilize the facilities of, the public schools in which those classes are located to the maximum extent beneficial for the student's particular needs.

(4) Where, because of his individual needs, a handicapped pupil attends either public or nonpublic alternate learning centers, as defined in this Part, such pupil shall be provided with maximum opportunities for association with the non-handicapped community through shared instruction and the use of specialized public school facilities and programs.

(5) Evaluations shall be conducted as frequently as the committee on the handicapped shall direct, provided that each child's educational program shall be evaluated annually.

(6) All teachers in special class programs shall be certified in the appropriate area(s) of special education.

(b) *Special classes (specific)*

(1) Special classes for children handicapped because of severe physical reasons. School districts may organize special classes for children who are blind, deaf, orthopedically handicapped or neurologically impaired, in accordance with the following criteria:

(i) The chronological age range of the children served shall not exceed three years.

(ii) Each special class register at the elementary level shall not exceed 10 children, and at the secondary level, shall not exceed 15 children.

(2) Special classes for children handicapped because of severe emotional reasons.

(i) The chronological age range of children served shall not exceed three years.

(ii) Each special class register shall not exceed 10 children at either elementary or secondary levels.

(3) Special classes for the mentally retarded.

(i) Special classes for the educable mentally retarded as defined in section 200.2 of this Part.

(a) The chronological age range of children in special class shall not exceed three years.

(b) The total register in special class at the elementary level shall not exceed 15; at the secondary level it shall not exceed 18.

(ii) Special classes for trainable mentally retarded as defined in section 200.2 of this Part.

(a) The chronological age range of children served in each such special class shall not exceed four years.

(b) The total register in special class for children through the chronological age of 12 shall not exceed 10 children; for children over the chronological age of 12, it shall not exceed 12 children.

(4) Special classes for children handicapped for autistic reasons:

(i) All school districts are required to furnish appropriate educational programs for autistic children from their fifth birthday until the end of the school year during which they attain their twenty-first birthday.

(ii) The length of the school day shall be identical to that required by section 175.5 of these regulations.

(iii) The chronological age range of children served in such special class shall not exceed four years.

(iv) Each special class register shall not exceed five children.

(v) At least one paraprofessional shall be assigned to each special class.

(vi) Minimal instructional services shall be provided to meet the individual language needs of an autistic pupil as set forth in subparagraph (i) of paragraph (3) of subdivision (d) of this section.

(vii) The functioning level of autistic children should govern their individual or small group instruction in order to provide the social and language skills necessary for their advancement into a larger group setting. For those children with improved social and language skills, instructional provisions should be instituted for eventual inclusion into resource programs for children with combined handicapping conditions or placement in a regular classroom.

(viii) In those instances where it has been determined that a larger group setting, such as a resource program or a regular class placement, is appropriate, at least one

paraprofessional shall be assigned to each such special class for every three children enrolled in the class.

(ix) In those instances where a child has been placed in programs containing children with other handicapping conditions or in a regular class placement, a special education teacher with a background in teaching autistic children shall regularly visit and assist the child in making an adjustment and assure that the child's special educational needs are being met by working with the child's teacher and the child and by being available for daily consultation.

(x) Provision shall be made for parent counseling and education enabling parents to perform appropriate follow-up intervention activities at home.

(xi) Special class instructional services to autistic children shall be provided by certified teachers of special education.

(5) Special classes for children handicapped because of multiple reasons. Special classes in this category include classes for children whose combination of handicaps is such that the programs of the special classes in paragraphs (1), (2), (3) and (4) of this subdivision are not adequate for the special education needs and services necessary for these children.

(i) The register of children in such class shall be based on the needs of the children as well as their chronological ages.

(ii) Children who are enrolled in special classes because of the multiplicity of their handicapping conditions will be provided with the services of certified specialists in two or more areas of special education.

(iii) The special class register for those multiply handicapped pupils who are severely to profoundly handicapped shall not exceed 12 pupils. One paraprofessional shall be assigned to such class for every three pupils enrolled in the class.

(iv) Autistic children enrolled in special classes for children handicapped because of multiple reasons shall be provided instructional services to meet their language needs as minimally specified in subparagraph (i) of paragraph (3) in subdivision (d) of this section.

(6) Upon application and justification of the commissioner, approval may be granted for variance from the chronological

age ranges and special class enrollments specified in paragraphs (1) through (5) is subdivision.

(c) *Resource programs (general)*

The formation of resource programs as instructional service options shall depend upon the nature of the child's capabilities and individual needs.

(1) The total enrollment in a resource program serving children with different handicapping conditions shall not exceed 20.

(2) Each handicapped child in a resource program shall receive at least one hour of individual or small group instruction, five days a week. A small group shall not exceed five handicapped children. Pupils shall spend not more than fifty percent of their time during the day in the resource program.

(3) The teacher shall be certified in the appropriate areas of special education related to the child's handicapping condition(s).

(d) *Resource programs (specific)*

(1) Educable mentally retarded, emotionally disturbed, physically handicapped. Physically handicapped shall include orthopedically handicapped, neurologically impaired, i.e., brain injured and other medical conditions.

(i) Instruction in a resource program shall be provided by a teacher certified in an appropriate category of special education for a minimum of one hour each day, five days a week.

(ii) The special instructional service to the above categories of handicapped children shall be provided by certified teachers of special education, deaf, speech and hearing handicapped or blind and visually handicapped.

(iii) The maximum teacher load for resource programs for handicapped children with one handicapping condition shall be limited to:

(a) 20 emotionally disturbed or 20 neurologically impaired children, or

(b) 20 educable mentally retarded or 20 orthopedically handicapped children

(c) Appropriate total teacher caseload for other medical conditions, shall be determined on the basis of in-

dividual review of specific medical conditions establishing eligibility, appropriate service and handicapped pupil need. However, the total teacher caseload shall not exceed 20 pupils.

(2) Resource programs for visually impaired and partially sighted. Visually impaired children who are either legally blind or partially sighted shall be provided with special instructional services by certified teachers of the blind and partially sighted as needed, based upon the individual education program for such children.

(i) Totally blind, elementary grade children requiring braille instruction shall be provided with individual or small group instruction not to exceed 3 totally blind children for not less than 5 hours each week.

(ii) Totally blind secondary grade braille-instructed children and legally blind elementary and secondary grade children requiring print media instruction shall be provided with individual or small group instructional services not to exceed 4 legally blind children for not less than 3 hours each week.

(iii) Partially sighted children shall be provided with individual or small group instructional services not to exceed 5 partially sighted children for not less than two hours each week.

(3) Resource programs for severely speech/language impaired.

(i) The total teaching load for teachers in a resource program for severely speech/language impaired shall be a maximum of 20 pupils.

(a) Service to individuals or groups not to exceed 2 shall be provided for 30 minutes each day, 5 days per week.

(b) Groups of 5 shall be provided service for 60 minutes each day, 5 days per week.

(c) When severely speech/language impaired children are provided service by teachers of the speech and hearing handicapped also serving other speech/language impaired pupils, the total caseload for such teacher shall not exceed 75 children.

(d) Severely speech/language impaired pupils shall be provided instructional service by a certified teacher of the speech and hearing handicapped.

(ii) Other speech/language impaired

(a) Other speech/language impaired pupils shall be provided instructional services by a certified teacher of the speech and hearing handicapped.

(b) When pupils identified as other speech/language impaired are served as a result of an indicated need, based upon the individual education program, instruction shall be on at least a twice-a-week basis.

(4) Resource programs for hearing impaired. Hearing impaired pupils shall be provided daily instructional programs.

(i) Individual service shall be provided by a certified teacher of the speech and hearing handicapped for hard of hearing children for a minimum of 30 minutes a day, 5 days per week.

(ii) Individual service by a certified teacher of the deaf shall be provided to deaf pupils for a minimum of 1 hour, 5 days per week.

(5) Resource programs with combined handicapping conditions. Children with different handicapping conditions, i.e., educable mentally retarded and neurologically impaired, combined for service shall be provided instruction within a total caseload not to exceed 20 pupils. School districts having fewer than 20 handicapped children may have the resource program teacher provide service to children who are not handicapped, provided that the handicapped and nonhandicapped pupils shall receive instruction at different times. Handicapped children shall receive instruction in groups not exceeding 5, for a minimum of one hour per day, 5 days per week.

(e) *Home and hospital instruction.*

(1) The qualification of teachers providing home and hospital instruction shall be as follows:

(i) For instruction at the elementary level, at least common branch certification, or special education certification, where appropriate, under the regulations of the commissioner.

(ii) For instruction at the secondary level, a minimum of certification in the subject area being taught, or, where appropriate, in special education.

(2) A pupil is eligible for home instruction if he is handicapped as defined in section 4401 of the Education Law, and is unable to attend school.

(3) The schedules for home instruction shall be subject to the individual needs of the child, and except for such individual considerations, shall meet the following requirements:

(i) Instruction at the elementary level shall be for a minimum of five hours per week, preferably one hour per day.

(ii) Instruction at the secondary level shall be for a minimum of 10 hours per week, preferably two hours per day.

(iii) Upon application and justification, approval may be granted for variance.

(iv) The school district shall maintain such records and periodic evaluations as are necessary to provide adequate assessment and appraisal of the progress made during the period of home instruction and readiness to return to a classroom program.

(f) *Individualized education program.* Each board of education shall provide for the preparation of an individualized education program for each handicapped pupil, in accordance with the provisions of this subdivision. The individualized education program shall be a written statement to meet the unique needs of each handicapped pupil, which shall be developed in a planning conference. An individualized education program shall be prepared at the time the child enters a special education program, and shall be reviewed and, if appropriate, revised periodically, but not less than annually.

(1) Content of individualized education program. The individualized education program shall include:

(i) A statement of present levels of educational performance of such pupil.

(ii) A statement of annual goals, including short-term instructional goals.

(iii) A statement of the specific educational services and instructional materials to be provided to such pupil, and the extent to which the pupil will be able to participate in regular education programs.

(iv) The projected date for initiation, and anticipated duration, of such services.

(v) Appropriate objective criteria and evaluation procedures and schedules for determining, on at least an an-

nual basis, whether the instructional objectives are being achieved.

(2) Planning conferences. Planning conferences to develop an individualized education program shall be conducted in accordance with the following:

(i) The conference for each new handicapped pupil shall be conducted as soon as possible, but no later than 30 days, after the child enters the special education program.

(ii) Participants at the planning conference shall include, but shall not be limited to, the pupil's teacher, the pupil whenever appropriate, the parent or legal guardian, a representative of the school district, other than the child's teacher, who is qualified to provide, or supervise the provision of special education, and other individuals at the discretion of the parent or agency. A member of the evaluation team, or a person who is knowledgeable about the evaluation procedures used with the child, shall also participate in the planning conference for a handicapped child who has been evaluated for the first time.

(iii) The notice of the planning conference given to the parent or legal guardian of the pupil shall inform such parent or legal guardian that the conference will be conducted at a date and time which is mutually acceptable to the parent or legal guardian and the employees of the school district.

(iv) If it is not possible or practicable for the parent or legal guardian to attend the conference, other alternatives may be attempted, including individual or conference telephone discussions.

(v) In order to assure active parent participation, an interpreter may accompany the parent or legal guardian to allow communication in his native or primary language.

200.5 Procedural due process

(a) A committee on the handicapped must fully notify a parent in writing that evaluative information is being sought regarding a child thought to be handicapped. A description of the proposed evaluation shall be included in the notice together with the uses to be made of the information. A written consent must be obtained from the par-

ent prior to initiation of a preplacement evaluation for potential placement in a special education program. Any change within a child's special education program, as distinguished from program placement, shall not be subject to parental consent. However, such changes are subject to prior notice to the parent.

(1) Evaluation means any procedures, tests, or assessments used selectively with an individual child and does not include basic tests administered to, or procedures used with, all children in a school, grade or class.

(2) In the event the parent does not grant consent for evaluation, the chief school officer may delegate authority to the principal of the school which the child attends to hold an informal conference.

(i) The parent of the child to be evaluated shall be informed that, upon request, he/she will be given an opportunity for an informal conference, with counsel or an advisor of the parent's choice, at which time the person in parental relation shall be afforded an opportunity to ask questions regarding the proposed evaluation.

(ii) After the informal conference is held, the chief school officer, or the principal, if designated by the chief school officer, shall determine whether sufficient basis exists to warrant testing of the child.

(iii) In the event the parent does not request or attend the conference, the school district shall initiate a hearing to determine whether sufficient basis exists to warrant testing of the child. The hearing for this purpose shall be conducted in accordance with the provisions of subdivision (c) of this section.

(3) The parent shall have the right to obtain review of the determination of the chief school officer or his designee made pursuant to this subdivision by an impartial hearing officer appointed by the board of education. The hearing for this purpose shall be conducted in accordance with the provisions of subdivision (c) of this section.

(b) A committee on the handicapped which has reason to believe that the identification, evaluation or educational placement of a child, or the provision of a free appropriate public education to a child, should be modified, changed or continued, shall advise the parent or legal guardian of such child of his opportunity to address the committee, either in person or in writing, on the propriety of

the committee's recommendation as to the classification or program placement of the child to be made to the board of education or trustees.

(1) A committee on the handicapped which, on the basis of an appropriate evaluation:
  (i) concludes that a child possesses a handicapping condition to a degree sufficient to warrant provision of special educational services; or
  (ii) recommends a change in the classification or educational placement of a child; or
  (iii) recommends the continuation of a child's educational placement; or
  (iv) recommends a change in the provision of a free appropriate public education to a child;

shall give written notice to the parent of its recommendation to the board of education or trustees.

(2) Such notice shall:
  (i) Describe in detail the recommendation to the board of education or trustees;
  (ii) Specify the test or reports upon which the recommendation is based;
  (iii) State that the school files, records and reports pertaining to the child will be available for inspection and interpretation. Such records shall be available for duplication at reasonable cost;
  (iv) Describe in detail the right to obtain a hearing in accordance with the provisions of subdivision (c) of this section, if there are objections to the recommendation;
  (v) Include a statement of procedures for appealing the decision resulting from the formal hearing;
  (vi) Indicate that the parent or legal guardian shall be afforded an opportunity to obtain an independent educational evaluation of the child and which shall include names, addresses and telephone numbers of appropriate public and private agencies and other professional resources where such services may be obtained. The parent has a right to such independent evaluation at public expense if the parent disagrees with the evaluation obtained by the school district. However, the school district may initiate a hearing to show that its evaluation is appropriate. If the impartial hearing officer's recommendation is that the

evaluation is appropriate, the parent has a right to an independent educational evaluation but not at public expense;

(vii) Indicate that the parent or legal guardian may be able to obtain free or low-cost legal and other relevant services at no expense to the school district and which shall include the names, addresses and telephone numbers of appropriate agencies and other professional resources where such services may be obtained;

(viii) Indicate that during the pendency of any proceedings conducted pursuant to this section, unless the commissioner or local board of education and the parents or legal guardian otherwise agree, the child shall remain in the then current educational placement of such child, or, if applying for initial admission to a public school, shall be placed in the public school program until all such proceedings have been completed.

(c) Within ten days after the receipt of a notice of recommendation in accordance with the provisions of subdivision (b) of this section or within 10 days after the receipt of a notice from the board of education or trustees that the recommendation of the committee on the handicapped has been rejected or modified by the board of education or trustees, or in the event that the committee on the handicapped fails to make a recommendation within thirty days from the date that a child has been referred to such committee for evaluation and recommendation, or the board of education or trustees shall fail to effectuate the recommendation of such committee within 30 days after the receipt of such recommendation, a parent or legal guardian may request, in writing, an impartial formal hearing which shall be conducted in accordance with the following rules:

(1) The board of education or trustees shall appoint an impartial hearing officer to conduct the hearing. The hearing officer shall be authorized to administer oaths and to issue subpoenas in connection with the administrative proceedings before him.

(2) A written or electronic verbatim record of the proceedings before the hearing officer shall be maintained and made available to the parties.

(3) At all stages of the proceeding, where required, interpreters of the deaf or interpreters fluent in the dominant language of the child's home shall be provided at district expense.

(4) The impartial hearing officer shall preside at the hearing and shall provide all parties an opportunity to present evidence and testimony.

(5) The parties to the proceedings may be represented by legal counsel, and may be accompanied by other persons of their choice.

(6) Unless a surrogate parent shall have previously been assigned, the impartial hearing officer shall determine whether the interests of the parent are opposed to or inconsistent with those of the child, or whether for any other reason the interests of the child would best be protected by assignment of a surrogate parent, and, where he so determines, the impartial hearing officer shall designate a surrogate parent to protect the interests of such child.

(7) The hearing should be closed to the public unless the parent requests an open hearing.

(8) The parents, school authorities and their respective counsel shall have an opportunity to present evidence and to confront and question all witnesses at the hearing. Each party shall have the right to prohibit the introduction of any evidence the substance of which has not been disclosed to such party at least five days before the hearing.

(9) The parents shall have the right to determine whether the child shall attend the hearing.

(10) The impartial hearing officer shall render a decision and mail a copy of the decision to the parents and to the board of education not later than 45 calendar days after the receipt by the board of education of a request for a hearing. The decision of the impartial hearing officer shall be based solely upon the record of the proceeding before the impartial hearing officer, and shall set forth the reasons and the factual basis for the determination. The decision shall also include a statement advising the parents and the board of education of the right to obtain a review of such decision by the commissioner pursuant to the provisions of Education Law, section 4404 and Public Law 94-142. Within five days from the receipt of a copy of the decision of the hearing officer, the board of education shall mail a copy of such decision, after deleting any personally identifiable information, to the Office for Education of Children with Handicapping Conditions, State Education Department, for the use of the State advisory panel.

(d) When a board of education is notified in writing by a child's parent or guardian, by a professional staff member of that district or by a licensed physician, that there is reason to believe that such child may possess a handicapping condition which would require the provision of special educational services, the board of education shall provide for a

determination of eligibility and classification for the pupil's placement in an appropriate special educational service or program in either a public or private facility within thirty days of such notification. Thereafter, if such child is found eligible for special educational placement, the board of education shall arrange for such placement within a further period of no longer than thirty days.

200.6 State aid to blind, deaf and severely physically handicapped in certain State-operated and State-supported schools provided by Articles 85, 87 and 88 of the Education Law and Chapter 1060 of the Laws of 1974

(a) Application for State appointment of deaf, blind or severely physically handicapped children to State-supported or State-operated schools for the blind, deaf or severely physically handicapped shall be initiated by parents through application to the commissioner, supported by adequate written evidence of the blind, deaf or severely handicapping condition. The commissioner will direct the parents to make arrangements at a designated State-operated or State-supported school for an evaluation. Such school will evaluate the child's eligibility for its program and notify the parents, and commissioner, of the results of this evaluation and recommend appointment, if appropriate. In the case of a child not recommended for appointment to a particular special school, such notification shall include all reasons for lack of acceptance of the child into the program and recommendations for more appropriate placement. The approval of the commissioner in granting the State appointment, if appropriate, will be determined upon the following criteria:

(1) Only those profoundly deaf, i.e., with a loss in excess of 80 db ISO in the better ear or deaf-blind, or severely physically handicapped students between the ages of 3 and 21, or legally blind students, at least kindergarten age or receiving a special instructional program at the preschool level, who are residents of New York State, may receive appointments to the State-operated or State-supported schools and be included for State support for their education.

(2) Deaf or blind children will be appointed to the school for the deaf or blind nearest their place of residence on a day basis. Residential school-week appointments, if available, will be considered only when travel arrangements preclude attendance on a day basis. Exceptions due to student educational needs may be necessary, and will be considered when a child's parent presents adequate justification for such placement. Appointments for severely physically handicapped children attending

the Human Resources School shall be on a day basis only.

(3) State-appointed pupils shall be eligible for transfer between State-operated and/or State-supported schools upon appropriate evaluation and recommendation of the State-operated and/or State-supported school which such pupils currently attend, with the approval of the commissioner. State-appointed pupils being considered for transfer shall remain in the school they currently attend until an alternate school placement is finalized.

(4) The State-supported or State-operated school may apply to the commissioner for the termination of the appointment of a pupil. An application for this purpose shall set forth the basis for such action. No appointment shall be terminated until the pupil can be transferred to a more appropriate program without interruption of the continuity of such pupil's educational program.

(5) For State aid purposes, the private State-supported schools shall conduct a full instructional program for not less than 180 days during the school year. Calendars of such days in session shall be submitted to the commissioner for approval by July 1st of the preceding school year.

(6) No State-appointed pupil may be suspended for disciplinary reasons unless the pupil is offered due process protection comparable to the provisions of section 3214 of the Education Law.

(7) The State-operated schools shall maintain the confidentiality of pupil records in accordance with the provisions of the Family Educational Rights and Privacy Act of 1974, as amended. The State-supported schools shall maintain the confidentiality of the records of all State-appointed pupils in a manner comparable to that required of school districts by the Family Educational Rights and Privacy Act of 1974, as amended.

(b) As used in this section, *aidable operating expenses* shall mean the necessary expenditures for approved educational program provided to State-supported pupils.

(1) State-supported and State-operated schools shall submit annually, at times designated by the commissioner, budget forms containing justification for all proposed expenditures for which State aid is required. Such budgets shall indicate by line item all positions and items of proposed expenditure. All budgets in connection with other than department funded programs shall be reported on a supplemental sheet similar to the format for State-aided programs.

(2) All annual expenditures shall be justified to the satisfaction of the commissioner in accordance with the instructions accom-

panying the annual year-end report forms submitted by the State-supported and the State-operated schools.

(3) All new positions requested in the annual budget shall be justified in a narrative statement attached to the budget request.

(4) Review of all budgets submitted by the State-supported schools will be guided by the expenditures at the State-operated schools for the deaf and blind. The portion of the salary of each employee which exceeds the salary of an employee having similar duties at the State-operated schools for the deaf and blind shall not be an aidable operating expense of such State-supported private schools, except that a location pay differential in the amount provided for in any contract or contracts between the State of New York and the certified or recognized employee organization or organizations representing State employees at the State-operated schools for the deaf and blind will be included as an aidable operating expense of schools located in the geographical areas to which such location pay differential applies.

(5) Budgets approved by the commissioner for a particular school year represent the maximum support for that year. State-supported schools shall limit items of expenditure and positions to those approved by the commissioner. Any transfer between line items of expenditure exceeding ten percent or $1,000, of the approved budget authorization for the school year, must have prior approval of the commissioner.

(6) Capital construction for new buildings, including related service facilities such as heating, sanitary, lighting facilities and improvement of grounds, and additions to accommodate growth of activity not a part of the State program, will not be approved as State aidable operating expenses. Such equipment or furnishings as are necessary to accommodate or maintain the educational program for State-appointed pupils are aidable expenditures, with the prior approval of the commissioner. All necessary repairs, including replacement of roofs, boilers, plumbing systems, installations of safety devices in existing buildings, such as proper exits, fire safety systems and renovation, considered necessary for maintaining generally accepted standards of instruction, living arrangements outside of the classrooms, protection of the health and safety of State-appointed students and the preservation of the physical plant may be approved, provided that application to the commissioner is made in advance of the incurring of any obligation.

Emergency repairs not exceeding $2,500 may be made without prior approval, but the nature and extent of such repairs shall be promptly reported to the commissioner.

(7) Research activities, programs for non-State-appointed pupils and all other activities with accompanying income and expenditures determined not to be a part of the educational program offered to State-appointed pupils will not be considered in determining State support.

(8) The governing board, by resolution adopted during the fiscal year it received a gift or bequest, may restrict such funds for capital use or other programs which are not State-supported. The board may, by similar resolution, restrict such funds to provide merit supplements to the salaries of staff approved by the commissioner for State-appointed students. Such supplements shall be excluded from any overhead charges. Copies of the resolutions restricting the use of funds from private sources and annual income derived from such funds, and a designation of funds from private sources that have been restricted by the donor, shall be filed with the commissioner as part of the report of expenditures submitted for final payment.

(9) The submission of the claim for final payment shall be accompanied by a report of income and expenditures. Income shall include all funds from governmental agencies and private sources including income derived from capital assets. Expenditures shall include the cost of services and program for State-appointed pupils as well as the cost of other services and programs administered by the school.

(10) State-supported and State-operated schools shall maintain adequate accounting records clearly setting forth the expenses allocable to approved programs and to those additional programs which are not subject to reimbursement.

(11) The accounting records of State-supported and State-operated schools shall be subject to audit and review at times designated by the commissioner and the Department of Audit and Control.

(12) All payments made to the State-supported and State-operated schools will be in accordance with actual expenditures incurred during the school year for which State payment is sought. Final expenditures are subject to audit by the Department of Audit and Control.

(c) *Services for deaf infants.* The eligibility of deaf infants to receive educational services pursuant to section 4204-a of the Educa-

tion Law, and the approval of educational facilities to provide such services, shall be determined in accordance with the provisions of this subdivision.

(1) For the purposes of this subdivision:

(i) *Deaf infant* means a child of less than three years of age who has a severe hearing loss which precludes the learning of spoken language through the sense of hearing alone. Infants who are unable to respond to sounds presented at intensities of 90 decibels (db) sound pressure level (SPL) shall be eligible for special educational assistance in order to develop spoken language. Infants of less than two years of age who are unable to respond at 60 decibels (db) sound pressure level (SPL) may be eligible for such services, provided that they have been recommended by a diagnostic agency.

(ii) *Approved facilites* means the schools for the deaf which are enumerated in section 4201 of the Education Law, and other public and private agencies which have been approved by the commissioner in accordance with the provisions of paragraph (3) of this subdivision.

(2) *Eligibility of infant.* An annual application for services shall be filed by the parents or legal guardians of deaf infants on forms prescribed by the commissioner. The initial application for each infant shall be accompanied by audiological, otological, and other appropriate reports which will be used in determining eligibility for program assistance. If an infant is determined to be eligible, a referral will be made to an approved facility by the commissioner. Continuation in the program shall be dependent upon infant progress reports which shall be submitted quarterly by the facility which each infant attends. If a facility indicates that an infant can not benefit from the educational program to which such infant has been admitted, the facility shall forward to the commissioner its recommendations for termination of the infant's participation in such program and for any appropriate education services for such infant.

(3) *Eligibility of facilities.* A facility shall be approved to provide educational services to such infants on an annual basis, following an inspection of such facility, provided that the plant, staff and program thereof meet the following standards:

(i) The facility shall provide an educational program for both infant and parent or legal guardian which shall

include language development, auditory stimulation, speech and speech reading. Language development may include any system of oral or manual communication or combination of both. Such program shall also provide orientation to parents regarding the implications of deafness, developmental needs of deaf infants, and the psychosocial problems encountered by parents or legal guardians of deaf infants.

(ii) An approved facility shall have a physical plant appropriately equipped to serve infants who are deaf, and shall be subject to a site visitation by the commissioner.

(iii) An approved facility shall adhere to all fire and safety regulations of the fire district in which it is located.

(iv) An approved facility shall employ New York State certified teachers of the deaf or speech and hearing handicapped, or hearing clinicians certified by the Department of Health. These teachers must have advanced training and experience.

(v) A register of approved facilities will be maintained by the department.

(4) *Payment for services.* Approved facilities shall submit quarterly a voucher for educational services rendered in accordance with these regulations. Vouchers shall be accompanied by a record of each infant's attendance and a report of each infant's progress during the period for which payment is requested. Payments shall not exceed $20 for each session of at least 45 minutes of instruction offered to the infant or his parent. The accounting records of an approved facility which received State aid pursuant to the provisions of section 4204-a of the Education Law shall be subject to audit and review by the Department of Audit and Control.

(5) Those approved facilities which are eligible to receive financial assistance through the Department of Health for medicaid patients or for infants approved under the medical rehabilitation program shall seek such assistance for each infant. Infants who are eligible for reimbursement under private insurance or other public health agencies shall not be eligible for tuition assistance. Where educational programming for the deaf infant includes parent orientation sessions which are not eligible for support by the Department of Health or other State or local agencies, the facility may claim that support from the Education Department providing that the facility is approved pursuant to paragraph (3) of subdivision (c) of this section.

200.7 Surrogate Parents

(a) *Selection.* Each Board of Education shall make provision for the selection of individuals willing to appear on behalf of a child under circumstances where the child's natural parents or guardian are unknown or unavailable or where the child is a ward of the State.

(b) *Qualifications.* Persons selected as surrogate parents shall not be officers, employees, or agents of the local school district or State Education Department involved in the education or care of children, and shall to the maximum extent possible:

(1) Have no other interest which could conflict with their primary allegiance to the child they would represent.

(2) Be committed to acquaint themselves personnally and thoroughly with the child and the child's educational needs.

(3) To the maximum extent possible, be of the same racial, cultural and linguistic background as the child they seek to represent.

(4) Be generally familiar with the educational options available to handicapped children.

(c) *Procedures for assigning surrogates.* Assignment of a surrogate parent to a particular child shall be made in accordance with the following procedures:

(1) Any person whose work involves education or treatment of children who knows of a child who may need special education services, and who knows that the parents or guardians are not known or are unavailable, or the child is a ward of the State, may file a request for assignment of a surrogate parent to the child with the child's school district.

(2) The school district shall send notice of the possible need for a surrogate parent to the adult in charge of the child's place of residence and to the parents or guardians at their last known address.

(3) The school district shall determine whether the parents or guardians are unknown or unavailable, or whether the child is a ward of the State. This determination shall be completed within a reasonable time following the receipt of the original request for a surrogate parent. If the school district finds that there is a need for a surrogate parent such assignment shall be made by the board of education or trustees within ten days.

(4) Once assigned, the surrogate parent shall represent the child at least through the time of the first periodic review of

the child's educational placement. In all instances, where appropriate, the child shall be represented by a surrogate parent throughout the entire review process.

200.8 State assistance for instruction to severely handicapped children in out-of-State facilities under the provisions of Section 4407 of the Education Law

(a) *Eligibility of pupils.* Satisfactory evidence must be provided that:

(1) The pupil for whom assistance is requested is of school age.

(2) There is present a severe handicap or combination of severe handicaps.

(3) An application to the commissioner has been made by the board of education of the school district in which such pupil resides, which shall include adequate medical and/or psychological examinations, establishing the fact that the child is severely handicapped to the extent that appropriate facilities for instruction are not available within the State.

(b) *Eligibility of schools.*

(1) The facility for attendance at which assistance is requested shall have an adequate and suitable special education program and shall have been approved by the department after a site visit to the facility either by department representatives or pursuant to a recommendation of appropriateness made by public officials of the State where the school is located. Application for approval of such a facility shall be made prior to February 1 of the school year for which the school is requesting approval.

(2) The department will require subtantiating data from the nonpublic school or facility that it has conducted an adequate and suitable special education program for at least one fiscal year prior to an application for approval under the provisions of Education Law, section 4407. In addition, the nonpublic school or facility will be required to submit audited financial statements for the previous fiscal year in conformity with the requirements of subdivision (b) through (h) of section 200.16 of this Part. Approval of a nonpublic school or facility under the provisions of Education Law, section 4407, will not be granted prior to receipt and acceptance of such statements by the commissioner.

(3) Facilities and educational programs located outside the continental United States will not be eligible for approval.

(4) Payments to the approved facility shall be utilized by that facility solely for those expenses directly related to the instructional program in accordance with allowable tuition charges as determined by the Commissioner of Education and approved by the Director of the Budget. Audits may be conducted by the Education Department or another State agency, if requested by the Education Department, to determine whether such payments are so utilized.

(5) Where other State agencies or the agencies of other states are involved in the funding of approved facilities, any audits conducted by such agency shall be made available to the department upon written request to the facility.

(6) An educational program report shall be provided by the approved facility to the committee on the handicapped of the referring district, at least annually. Other required data and/or reports shall be made available by the approved facility to the referring district upon request. The local school district and/or board of cooperative educational services may also require that a pupil report for an evaluation by the district or board of cooperative educational services to determine the continued eligibility of such pupil for State assistance pursuant to Education Law, section 4407. Failure to comply with requests for information or failure of a pupil to appear for evaluation shall be a cause for denying approval.

(7) When a public or nonpublic facility for instruction has been indicated as not available within the State for a handicapped child, placement in an approved out-of-State nonpublic facility shall be for the entire school year or the balance thereof. No handicapped child shall be removed or transferred from an approved school without the approval of the department.

(8) All approved out-of-State nonpublic schools shall comply with attendance laws in that state applicable to public schools.

(9) No student attending an approved out-of-State nonpublic school pursuant to the provisions of Education Law, section 4407 may be suspended for disciplinary reasons by such school unless the pupil is afforded due process protection comparable to the provisions of section 3214 of the Education Law.

(10) No parent or guardian of a child attending an approved out-of-State school pursuant to the provisions of section 4407 of the Education Law shall be required to make any payment for tuition or maintenance on behalf of such child, or

to participate in any type of fund raising activity for that school.

(11) All approved out-of-State nonpublic schools shall maintain the confidentiality of the records of pupils attending such schools pursuant to the provisions of Education Law section 4407, in a manner comparable to that required of school districts by the provisions of the Family Educational Rights and Privacy Act of 1974, as amended.

(c) *Application.* Approval of the commissioner for placement of a severely handicapped child in an approved out-of-State nonpublic educational facility must be requested, and approval must be granted prior to such placement annually.

200.9 Approval of nonpublic schools located within the State under the provisions of section 4402 of the Education Law

(a) Nonpublic schools for handicapped pupils shall be eligible for approval by the department, for the purpose of contracting with school districts for the education of handicapped pupils, provided such schools meet the criteria established for public school programs for special classes, and special education teachers pursuant to section 200.4 of this Part.

(b) A report of the annual fire inspection as required by section 807-a of the Education Law shall be on file in the school.

(c) In the case of a new facility for special education or a new program for special education within an existing approved facility such facility or program shall be eligible for approval upon compliance with all pertinent regulations, and following review of the proposed facility or program and recommendation for approval by a site visit team appointed by the department.

(d) A nonpublic facility shall be required to provide copies of all necessary reports and professional evaluations conducted relative to the program of instruction for the handicapped child to the local district contracting for instructional services for that child.

(e) Charges to school districts shall be determined on the basis of allowable tuition costs, as determined by the commissioner with the approval of the Director of the Budget.

(f) All nonpublic facilities shall be subject to audit by the State and school districts providing funds to that school.

(g) No handicapped child shall be removed or transferred from an approved school without the approval of the school district contracting for such child under Education Law section 4402.

(h) All approved nonpublic schools shall comply with the Educa-

tion Law regarding attendance. Attendance registers shall be available for inspection by appropriate personnel of the contracting district, the department, and the school district in which the school is located.

(i) All approved nonpublic schools shall maintain the confidentiality of the records of each student for whom such schools are providing instruction pursuant to contract with a school district, in a manner comparable to that required of school districts by the Family Educational Rights and Privacy Act of 1974, as amended.

(j) No handicapped pupil for whom a school district has contracted with an approved school may be suspended for disciplinary reasons by such school unless the pupil is afforded due process protection comparable to the provisions of section 3214 of the Education Law.

(k) No parent or guardian or any other persons shall be required to make any payment for tuition or maintenance on behalf of any handicapped child for whom the district has contracted.

(l) An educational progress report shall be provided by the approved school to the committee on the handicapped of the referring district at least annually. Other required data and/or reports shall be made available by the nonpublic school to the referring district on request.

(m) A parent or guardian of an eligible handicapped child attending an approved school shall not be required to participate in any type of fund raising activity for that school.

(n) When a public facility for instruction has been indicated as not available for a handicapped child, placement in an approved nonpublic facility shall be for the entire school year or the balance thereof.

(o) *Application.* An application shall be made to the commissioner by the board of education for approval of the placement of a severely handicapped pupil in an approved nonpublic educational facility located within the State. An annual application for the continued placement of a severely handicapped pupil in an approved facility shall be submitted by the board of education to the department prior to June 1 preceding the school year for which such continued placement is sought.

(p) Prior to approval under provisions of Education Law section 4402, the nonpublic school or facility will be required to submit audited financial statements for the previous fiscal year in conformity with the requirements of subdivisions (b) through (h) of section 200.16 of this Part.

200.10 State aid for maintenance

(a) Prior to contracting with an approved private residential school for the instruction of a handicapped pupil in accordance with the provisions of section 4402 of the Education Law, a board of education shall notify the department of the name and the county of residence of such pupil, the name and address of such private residential school recommended, the amount to be charged by such school for maintenance, and the dates upon which such school will commence and terminate residential care of the pupil, and shall submit evidence that there is no appropriate nonresidential school available consistent with the needs of the pupil.

(b) Upon approval of the proposed placement, the department shall notify the appropriate municipality of the placement of a pupil in a private residential school, and of its obligation to pay for the maintenance of such pupil at the approved rate pursuant to the provisions of section 4405 of the Education Law.

(c) The department shall reimburse each municipality in the amount of one-half of such maintenance expenditure, less reimbursement to such municipality from any other source on behalf of the pupil.

(d) All claims for expenses incurred in providing residential care shall be paid in the first instance by the board of supervisors or other governing elective body of the county or chief fiscal officer of the City of New York in which such handicapped child resides, upon vouchers presented and audited in the same manner as in the case of other claims against the county or the City of New York.

(e) The clerk of the board of supervisors or other governing elective body of each county or chief fiscal officer of the City of New York which has paid claims shall, not more than once each month, transmit to the commissioner a certified statement in the form prescribed by the commissioner, stating the amount expended for such purposes and the dates of such expenditures.

(f) Each certified statement for payment by the State pursuant to the provisions of section 4405 of the Education Law shall be submitted to the department not later than 12 months from the last day of the school year within which residential care was provided.

200.11 State assistance for the instruction of handicapped pupils pursuant to section 4406 of the Education Law

(a) *Approval of orders of the Family Court.* An order of the Family Court which directs that special educational services be provided to a handicapped pupil may be approved by the commissioner, provided that satisfactory evidence is submitted to establish that such

pupil is a handicapped child as defined by section 4401 of the Education Law and:

(1) That such pupil is not eligible for educational services pursuant to article 73, 85, 87, 88, or 89 of the Education Law; or,

(2) That such pupil meets all the criteria of subdivision one of section 4401 of the Education Law except that the pupil is under the age of five and is not entitled to attend public schools without the payment of tuition pursuant to section 3202 of the Education Law and that such pupil is also not eligible for educational services pursuant to article 73, 85, 87, 88, or 89 of the Education Law.

(b) No order of the Family Court shall be approved with respect to any pupil who has not previously received State assistance pursuant to the provisions of sections 4406 and 4407 of the Education Law to attend such school, or any pupil who is to be enrolled in a private school which has not been approved by the department in accordance with provisions of sections 200.8 and 200.9 of this Part unless appropriate notification has been received by the department on or before April 15 in the school year for which special educational services are sought. The provisions of this subdivision shall not apply to a pupil enrolled in a school subject to visitation by the commissioner pursuant to article 85 of the Education Law.

(c) Reimbursement by the State for tuition or maintenance pursuant to the provisions of Education Law section 4406 shall not exceed one-half of the allowable annual rates for tuition or maintenance established for the school which the pupil will attend, or in the case of an educational placement for the months of July and/or August, State reimbursement shall not exceed one-half of the allowable annual rates for tuition and maintenance for such school divided by ten, for each month.

(d) Each voucher for payment by the State pursuant to the provisions of subdivisions 2 and 3 of section 4406 of the Education Law shall be submitted to the department by a county or city not later than 12 months from the date on which a certificate of approval for State aid was issued, or 12 months from the last day of the school year within which special educational services were provided, whichever is later.

200.12 Census of handicapped children

(a) The board of education or trustees of each school district shall locate and identify all handicapped children from birth to 21 years of

age who reside in the district. A register of such children shall be maintained and revised annually by the district committee on the handicapped. Procedures shall be implemented to assure the availability of statistical data to readily determine the status of each handicapped child in the identification, location, evaluation, placement and program review process. Data shall be reported by September 15 to the committee on the handicapped.

(b) *Data requirements.* Procedures shall be designed to record data on each child and shall include at least the following types of data:

(1) Child's name, address and birthdate;
(2) Child's parents' names and address(es);
(3) Child's suspected handicap(s);
(4) Dates of referral, evaluations, recommendations of the committee on the handicapped, actual placement, and annual program reviews;
(5) Physical location where child is currently receiving an educational program;
(6) The data shall be organized so that it can readily be determined whether the child is receiving an appropriate public education, a partial education or no education at all; and
(7) The reason why the child is not receiving an appropriate public education shall be recorded.

(c) *Data collection.* Data regarding each child with a suspected or confirmed handicap shall be obtained in accordance with the following policies:

(1) All persons involved in the collection of data shall have received prior training and written information regarding the procedures to be followed in collecting the data.
(2) Should the district choose to conduct a door-to-door census, all census takers shall have proper credentials that clearly identify themselves as census takers representing the school district.
(3) The school district shall assure confidentiality and security of child data when requesting that a person or agency serving handicapped children provide information regarding children who are not enrolled in school and who may need special education services.

(d) *Data reporting.* The reporting of child data shall be conducted in accordance with the following policies and procedures:

(1) School districts shall prepare summary reports of child data, including numbers of children who are: (a) unserved and the

reasons they are unserved; and (b) served. Such summary reports shall be on file within the school district.

(2) A summary of the child data shall be submitted by local school districts to the State Education Department on prescribed forms and in the prescribed manner.

(e) The board of education or trustees of each school district, with the exception of cities with 125,000 or more inhabitants, shall report the register of handicapped children to the district superintendent of the supervisory district in which the district is located, by the first of October of each year.

(f) Subdivisions (a) through (e) of this section shall not apply to schools and pupils subject to the provisions of articles 85, 87 and 88 of the Education Law and chapter 1060 of the Laws of 1974. Schools subject to the provisions of such articles and chapter shall keep their own census of children, and shall submit such census directly to the commissioner on forms prescribed by the commissioner.

200.13 Allowable tuition and maintenance rates. The amount which an approved nonpublic school or facility may charge for tuition and/or maintenance for handicapped pupils enrolled in such school or facility pursuant to the provisions of sections 4402 or 4407 of the Education Law shall be determined in accordance with the provisions of section 4401 of the Education Law and this section.

(a) Application for an adjustment in the rate which each nonpublic school or facility may charge for tuition and/or maintenance may be made to the commissioner within 60 days after notification of the certified rates has been mailed to the school or facility. The application shall be in the form prescribed by the commissioner, together with a narrative justification in support of the requested adjustment. The commissioner may recommend amended tuition and/or maintenance rates based upon financial reports submitted by the nonpublic school or facility and/or field audit of the nonpublic school or facility.

(b) The allowable rates for tuition and/or maintenance at each approved nonpublic school or facility will be determined for the 1977–78 school year by the first of July and each school year thereafter by no later than the first day of May preceding such school year.

(c) The allowable tuition rate for each approved nonpublic school or facility shall be based upon a minimum of 180 days or the total number of days of instruction during the September through June school year, whichever is greater. The allowable tuition rate shall include all educationally related medical expenses such as those which are provided by a school district pursuant to Part 136 of this title, provided such expenses are not included in the maintenance

charged by a residential school in accordance with subdivision 3 of section 4401 of the Education Law. If an approved nonpublic school or facility provides instructional days in excess of 180 days required by the commissioner, such excess days shall be includable in the allowable rate only if advance approval of the commissioner is obtained. Approval shall be granted based on the demonstrated need for such excess days due to the nature of the handicapping condition. For the purposes of this subdivision, a pupil shall be deemed to be in attendance at an approved nonpublic school or facility during the period for which such pupil is enrolled at such school or facility. If any handicapped pupil is in attendance during the September through June school year for a period of less than the full ten-month school year, the amount which an approved nonpublic school or facility may charge for tuition shall be calculated, as follows:

(1) For each month during which such pupil continues in attendance, one-tenth of the allowable tuition rate.

(2) For less than one month of attendance, one quarter of one-tenth of the allowable tuition rate, for each week of attendance, not to exceed four weeks in any one month; at least three days in a week to be considered as one full week. In the event that a pupil leaves school during a month, no time of attendance shall be counted beyond the last week in which the pupil actually attends classes.

(d) The allowable maintenance rate for each approved nonpublic school or facility shall be based upon the September through June school year. If any handicapped pupil is enrolled during the September through June school year for which residential care is provided to such pupil for a period of less than the full ten-month school year period, the amount which an approved nonpublic school or facility may charge for maintenance shall be calculated, pro rata, as follows:

(1) For each month of enrollment in a residential program, one-tenth of the allowable maintenance rate.

(2) For less than one month of enrollment in a residential program, one quarter of one-tenth of the allowable maintenance rate, for each full week of residential care, not to exceed four weeks in any one month; at least three days in a week to be considered as one full week.

(e) Purchases of goods or services by a nonpublic school or facility from anyone with a conflict of interest will be excluded from the computation of tuition rates and maintenance rates for reimbursement purposes. The following will be considered as having a conflict

of interest: Anyone who serves as a part of the management or as a volunteer or employee of the nonpublic school or facility or any of the following relations of such persons: spouse; child or descendant; parent or ancestor; sibling; or spouse of descendant, ancestor or sibling. For the purposes of this Part, a former spouse will be considered to be a spouse. Dealings with partnerships of which such persons are partners or employees, or dealings with corporations in which any such person is an officer, director, or trustee, or in which any such person owns more than 10 percent of the stock, will not be deemed to be an allowable expense in the computation of the allowable tuition and maintenance rates. Dealings with corporations in which any such person is an employee will be treated as a nullity if such corporation has a net worth of under five million dollars. The original arm's-length purchases of the goods or services involved will be used to determine cost basis for reimbursement.

(f) Depreciation expense on capital expenditures for an approved nonpublic school or facility and equipment will be recognized as an element of cost if prior programmatic and financial approval have been obtained from the commissioner for such capital expenditures. Expenditures within a fiscal year for renovations or alterations of 10 percent of historical cost up to a maximum of $10,000 will be considered minor capital expenditures for which prior approval is not required.

(g) Interest expense for other than debt service will not be allowed as an element of cost in the computation of tuition rates and maintenance rates prior to final audit of an approved nonpublic school or facility. Interest costs necessarily incurred as a result of an unreasonable delay by a State agency in the rate certification process will be reimbursed if shown to be reasonable. Interest costs incurred due to delay in payments from any school district or municipality will not be recognized as an element of cost in the initial rate setting stage. However, if interest costs are necessarily incurred as a result of unreasonable delays of scheduled contract payments by a contractor, interest on such necessary borrowing may be charged to that school district or municipality to the extent allowed by contract and not prohibited by law. Interest incurred in a non-arm's-length transaction will not be allowed as an element of cost for reimbursement purposes.

200.14 State assistance for the transportation of handicapped pupils pursuant to Section 4405 of the Education Law. An expenditure by a school district to provide suitable transportation during the September through June school year for a handicapped pupil to and

from special classes and programs operated by a private residential school located within or outside of the State, or by the schools enumerated in article 85, 87, 88 or 89 of the Education Law, shall be aidable provided that:

(a) The pupil was placed in such school in accordance with the provisions of article 85, 87, 88 or 89 of the Education Law; and

(b) The expenditure is for transportation from the pupil's home to the school at the commencement of the school year, from the school to the pupil's home at the conclusion of the school year, and no more than three additional trips to and from school during the school year, except as additional trips may need to be provided for the periods during which residential care is not provided to the pupils attending such school.

200.15 Confidentiality of personally identifiable data

(a) Personally identifiable data, information or records pertaining to a handicapped pupil shall not be disclosed by any officer or employee of the department or any school district, or member of a committee on the handicapped, to any person other than the parent of such pupil, except in accordance with the provisions of part 99 of title 45 of the Code of Federal Regulations.

(b) Each nonpublic school subject to the provisions of section 200.6, 200.8 or 200.9 of this Part shall adopt procedures comparable to those set forth in part 99 of title 45 of the Code of Federal Regulations to preserve the confidentiality of records pertaining to pupils attending such schools pursuant to State appointment or contract between the department or a school district and the nonpublic school.

200.16 Annual Financial Statements

(a) All approved nonpublic schools or facilities shall submit on or before November 15, annual financial statements for the previous fiscal year.

(b) Such statements shall be prepared on the accrual basis of accounting and in accordance with generally accepted accounting principles.

(c) The statements shall include, with notes, a balance sheet, statement of financial activity, statement of changes in financial position, and an analysis of functional expense, together with a public accountant's opinion thereon.

(d) Revenues received from Federal, State, and local governments and agencies shall be disclosed by source and amount in the financial statements.

(e) If costs have been allocated among programs and supporting services, disclosure of such allocation and the method by which such allocation was made, shall be stated.

(f) Schools operating programs in different locations with a consolidated financial report shall designate each location as a cost center in the statement of financial activities. In addition, the notes accompanying the financial statements shall include the basis used in allocating income and expenses to each location.

(g) The statements shall disclose the method used to compute the actual instructional costs and maintenance costs per pupil.

(h) If the facility is a controlled or controlling organization, disclosure of the affiliate's existence and its relationship to the facility shall be made, including any financial transactions between the two.

(i) The nonpublic schools or facilities shall retain all pertinent accounting records for a period of six years.

200.17 Admission to public schools of children residing in facilities of the Office of Mental Hygiene and the Office of Mental Retardation and Developmental Disabilities

(a) Children residing in hospitals of the Office of Mental Hygiene and schools of the Office of Mental Retardation and Developmental Disabilities shall be identified, evaluated and provided with special education and related services in accordance with the provisions of section 116.4 of this Title. The committee appointed in each facility pursuant to subdivision (a) of section 116.4 of this Title shall recommend to the school district in which the facility is located that those children determined by the facility committee to be able to benefit from instruction in a public school program be admitted to the schools of such district.

(b) The school district committee on the handicapped shall review the recommendation of the facility's committee, and all relevant supporting information and data, to determine whether the school district has an educational program appropriate to the needs of each child so recommended, or whether an appropriate program can be provided by a board of cooperative educational services or another school district by agreement with the school district in which the facility is located. If the committee on the handicapped determines that the school district has an appropriate program for such a child, or can provide an appropriate program by agreement with a board of cooperative educational services or with another school district, such

committee shall recommend to the board of education that the child be admitted to such program. In the event that the committee on the handicapped determines that there is no program appropriate to the needs of such a child in the schools of the district, or at a board of cooperative educational services or another school district, such committee shall report its findings to the board of education. If the committee on the handicapped concludes that placement in a private school for the handicapped is the appropriate educational placement for the child, the committee's report to the board of education may include a recommendation that the board of education recommend that the Office of Mental Hygiene or the Office of Mental Retardation and Developmental Disabilities place such a child in a private, nonresidential school for the handicapped.

(c) If a board of education determines that there is no program appropriate to the needs of a child in the schools of the district, or at a board of cooperative educational services or another school district, the board of education shall give notice of such determination to the parent or person in parental relation to the child, if the identity of the parent or such person is available to the board, and to the chief administrator of the facility in which the child resides. Such notice shall also inform the recipients that review by the Commissioner of Education of the determination made by the board of education may be obtained in accordance with the provisions of Education Law section 310.